IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.949 DB of 2003
Date of decision: 4th December, 2007

Ram Chander

…Appellant

Versus

State of Haryana

…Respondent

CORAM: HON'BLE MR.JUSTICE MEHTAB S.GILL
HON'BLE MR.JUSTICE HARBANS LAL

Present: Mrs.Vandana Malhotra, Advocate
for the appellant.

Mr.SS Randhawa, Addl. Advocate General, Haryana

Harbans Lal, J.

This appeal has been directed against the judgment/ order of sentence dated 29th November, 2003/3rd December, 2003 rendered by the Court of learned Additional Sessions Judge, Panchkula, whereby he convicted and sentenced the accused-Ram Chander to undergo imprisonment for life and to pay a fine of Rs.10,000/- or in default thereof to further undergo simple imprisonment for six months under Section 302 read with Section 34 of the Indian Penal Code.

The factual matrix of this case is that Sukhdevi complainant/ wife of the deceased Jagdish was residing in a hut near Bharat Gas Agency, Panchkula alongwith her husband, who was earlier rickshaw puller by profession and now he had started selling groundnuts on a Rehri in Sector 21, Panchkula. She herself used to work as a maid-servant. Tara, sister of

the deceased Jagdish was residing with her family in Devi Nagar, Panchkula, on the other side of river Ghaggar. On 28th November, 2001, Tara was present in the hut of Jagdish, who had returned home at about 8.00 PM. He had just been served with his meals in a Thali. Meanwhile, accused Mukesh (juvenile being tried by the Juvenile Court) entered the hut. He kicked the Thali lying in front of Jagdish and asked him to accompany him. To the query of the complainant, Mukesh proclaimed that he (Mukesh), Jagdish, Nisar (proclaimed offender) and Ram Chander had indulged in gambling in which Jagdish had won his (Mukesh) watch and also Rs.700/- in cash and that they wanted to continue the game. So, they wanted Jagdish to accompany them. Jagdish refused to go with him. He was forced to accompany them. When Mukesh alongwith Jagdish stirred out of the hut, Nisar and Ram Chander were already waiting outside. Thereafter, they all three took Jagdish with them. Jagdish did not return home in the night. In the next morning Sukhdevi started making inquiries about her husband. She went to the shop of Babu Ram where Jagdish sometimes used to sleep. Babu Ram did not know about the whereabouts of Jagdish. Sukhdevi accompanied by her Nanad Tara and others continued searching for her husband. They found a dead body lying in a gutter. One V-shape Chappal was lying outside the gutter. The same was identified by Sukhdevi to be of her husband. Shiv Charan son of Babu Ram had also reached the spot. He disclosed that at about 8.30/9.00 PM on the previous night, he had seen Nisar, Ram Chander and Mukesh giving beatings and calling him bad names. Thereafter, Sukhdevi alongwith Babu Ram went to the Police Post,

Sector-2, Panchkula and made a statement, on the basis of which F.I.R. was registered. Gorakh Pal, Sub Inspector went to the spot. The dead body was taken out from the gutter and the same was got photographed, inquest proceedings were conducted, whereafter, Inspector Rajiv Deswal came at the spot. He took up the investigation. The autopsy was got performed on the dead body. The rough site plan was prepared. Mukesh and Ram Chander were arrested from the huts situated in Sector-4, Panchkula. Pursuant to their respective disclosure statements, they got recovered stones, which were allegedly used as weapons of offence, as also the blood stained clothes. After completion of investigation, charge-sheet was laid in the committing court.

On commitment, the accused Ram Chander was charged under Section 302 read with Section 34 IPC, to which he did not plead guilty and claimed trial.

To bring home guilt against the accused, the prosecution examined PW1 Tara, PW2 Constable Darshan Singh, PW3 Sukhdevi Complainant, PW4 Manohar Lal Draftsman, PW5 ASI Gian Chand, PW6 Shiv Charan, PW7 Dr.Jyoti Kaushal, PW8 Head Constable Nasib Singh, PW9 Constable Mohinder Singh, PW10 ASI Om Parkash, PW11, SI Gorakh Pal and PW12 Inspector Rajiv Deswal. On 6th November, 2003, the prosecution evidence was shut out by order of the Court with the observations that only one witness, namely, Arun Kumar photographer remains to be examined and his summons have been received back with a report hat he has gone somewhere after selling his shop and today it was the

last opportunity and hence, the evidence of the prosecution is closed by order.

On close of the prosecution evidence, when examined under Section 313 Cr.P.C., the accused has come up with the following plea:

> "I was not at all present at the time of alleged quarrel with the deceased. I am not at all concerned with the alleged murder of Jagdish. I had not gambled with Jagdish nor I met him on the alleged day. I am a rickshaw puller and have been falsely involved by the wife of the deceased without any reason. I am innocent. Nothing has been recovered from me. The police have got my thumb impression forcibly on the alleged disclosure statement."

Without adducing any evidence, he closed his defence.

We have heard Mrs.Vandana Maohotra, Advocate representing the appellant and Mr.S.S.Randhawa, Additional Advocate General, Haryana at a prolix length and have gone through the evidence on record with due care and circumspection.

Mrs.Vandana Malhotra, Advocate on behalf of the appellant has strenuously urged that even if it is believed that the deceased was last seen in the company of the accused by Sukhdevi as well as Tara PWs, despite that this evidence proprio- vigore would not be sufficient to draw the conclusion that the murder was committed by Ram Chander accused. There is no cogent, convincing and clear evidence on the record to depict that the murder was committed by this accused. To buttress this stance, she

has sought to place abundant reliance upon the observations made in re: **Ved Parkash alias Bhagwan Dia vs. State of Haryana, Rajesh @ Raju vs. State of Haryana and Gurdial Singh vs. State of Haryana,** 2006(3) Recent Criminal Reports (Crl.) 992.

Mr.S.S.Randhawa, Additional Advocate General, Haryana countered this argument by urging with great vehemence that the stones as well as the blood stained clothes got recovered by the accused coupled with the last seen evidence lead to the only conclusion that the murder of the deceased Jagdish was perpetrated by the appellant alongwith his co-accused. We have given a thoughtful consideration to the rival contentions. Sukhdevi widow of the deceased has stated in candid terms that about one year and 3 months back when her husband Jagdish was about to take his meals, Mukesh accused entered their hut and caught hold of her husband from his arm and took him outside, where accused Ram Chander and Nasir were already present and that she knew all of these three accused being the residents of her Mohalla. It is also in her evidence that they all three told us that Jagdish had won Rs.700 and a watch in gambling, so they were taken to Jagdish to continue with the game. But Jagdish did not return home that night. Tara PW sister of the deceased who was per-chance present in the deceased's hut has also stated in identical terms. These witnesses could not be impeached during their cross-examination. So, we do not find any reason on the record to disbelieve their statements. It is discernible from their evidence that the deceased was forcibly taken away by the accused on the pretext to resume the game of gambling. The last seen evidence being of

sterling character cannot be brushed aside.

In re: **Ved Parkash 's case (supra)** sought to be relied upon by Mrs.Malhotra, story of last seen was not believed. Though, in the case in hand, the last seen evidence is impeccable for the reason that the presence of Sukhdevi being wife of the deceased and Tara being sister of the deceased in the hut at the material time was natural. Sukhdevi as well as Tara both resides in Panchkula.

Shiv Charan PW6 has testified that on 28th November, 2001, at about 8.30/9.00 PM, he had seen Nisar, Ram Chander, Mukesh and Pandey quarrelling with Jagdish and he had dissuaded them from quarreling and thereafter, he left the place and on the next morning at about 10.30 AM he had seen a gathering of people at a distance of 100/200 yards from his Dhaba and near the Nala in which the dead body was lying and the same was got taken out and he identified the same to be of Jagdish. This evidence fortifies that the deceased and the accused were together and the latters were quarrelling with the deceased. In this manner, there remains not even an iota of doubt that the deceased was last seen in the company of the accused. As is established by the prosecution evidence, the deceased had won a cash amount of Rs.700/- and a watch from the accused. This was rankling in their hearts. They wanted to resume the game of gambling, to which the deceased might have been disagreeing. He might be reluctant to part with the watch as well as the aforesaid amount won by him from the accused. Thus, there could be every reason for the accused to deal with the deceased in a violent manner. There is nothing on the record to show

that Sukhdevi, Tara and Shiv Charan PWs were inimically disposed of towards the accused. So, no reason can be apportioned to these witnesses for falsely implicating the accused in this case.

As per testimony of PW6 Shiv Charan, Ram Chander accused pursuant to his disclosure statement Ex.PK got recovered a shirt Ex.P/9, a pant Ex.P/8 and a stone Ex.P/10 and accused Mukesh got recovered a T-Shirt Ex.P/6 and a stone Ex.P/7. As emanates from the evidence of Inspector Rajiv Deswal PW12, Mukesh had also got recovered his clothes including his T-shirt Ex.P/6. Find of blood found on T-Shirt as per Forensic Science Laboratory's report Ex.PH/1 was of 'B' group. The blood stains on the pant Ex.P/8 and shirt Ex.P/9 got recovered by Ram Chander accused were also of 'B' group. As would be apparent from the FSL report Ex.PH, the T-shirt recovered from the scene of crime also bore blood stains of 'B' group. On one stone piece, got recovered by one of the accused human blood was found. The same being inconclusive Ex.PH/1 opinion regarding its group could not be found. The group of finds of blood on all the abovementioned clothes of the deceased as well as the accused being the same, the accused is connected with the commission of the murder.

In re: **State of West Bengal vs. Mir Mohammad Omar and others etc. etc.** 2000(2) Simla Law Journal, 1679, a young businessman of Calcutta was abducted and killed. The kingpin of the abductors and some of his henchmen were later nabbed and were tried for the offences. They were convicted and sentenced. The Apex Court observed in paragraph 30 of the judgment that the abductors have not given any explanation as to what

happened to Mahesh after he was abducted by them. In paragraph 34, it has been observed that "when it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone know what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if accused would tell the Court what else happened to Mahesh at least until he was in their custody".

Harking back to the facts of the instant case, Dr.Jyoty Kaushal PW7 has stated in the following terms:

> "On 30.11.2001 I conducted post mortem on the dead body of Jagdish son of Munshi caste Dhobi resident of Motipura PS Shahbad Ambala Distt. Rampur (UP). I found the following injuries on the person of deceased:-
>
> 1. Multiple abrasions biggest measuring 3cm x 5cm on the right anterolateral aspect of chest below the nipple.
> 2. Multiple abrasions on right shoulder and right upper arm.
> 3. Multiple abrasions on anterolateral aspect left chest shoulder left upper arm.
> 4. Right ear split open from upper part of the tragcis to the upper part of outer pinna.

5. Multiple abrasions on all over the face present.
6. Lacerated muscle deep wound 3” x 5” in the centre of the forehead extending upto the hair line.
7. Incised wound on left parietal region. Starting from the hair line extending upwards 2” x 5”.
8. Incised wound parallel to the No.7 2” x5” bone deep.
9. Incised wound V shaped 1.5” x 5” bone deep on the left frontal bone.
10. Incised wound 6”x1” bone deep on the posterior part of left parietal bone.
11. Lacerated wound 4” x 3” on the right posterior parietal bone, underlying bone fractured at many places.
12. Lacerated wound 5” x 3” involving right parietal occipital bone, underlying bone fractured at many places & brain matter visible.
13. Incised wound 1.5” x 5” behind right pinna bone deep.
14. Lacerated wound 5” x2” involving occipital bone, underlying bone fractured at many places, brain matter visible.
15. Incised wound 4” x1” below the hair line on right side of neck.

16. On opening the skull, clotted blood seen at many places. Right and left parietal and occipital bones fractured and crushed at many places underlying brain matter badly lacerated.

Stomach and its contents, part of small intestines and their contents and large intestines and their contents were sent for chemical analysis. Rest organs were healthy.

In my opinion, the cause of death was due to the injuries caused on the person of deceased and the above mentioned injuries were sufficient to cause death in the ordinary course of nature and were ante-mortem in nature. (after seeing the FSL report Ex.PH & Ex.PH/2). Ex.PL is the post mortem report which is in my hand and it bears my signature as well as signature of Dr.Sonia Singh Chaudhary (attested photo copy). I have brought the original record today. I conducted the post mortem on the request of the police which is Ex.PL/1. Ex.PL/2 are the inquest papers which were initialed by me. Injuries No.6,11,12,14 and 4 are possible with the stone Ex.P7 and Ex.P10 (shown to me in the court today)."

Obviously, in her opinion injuries no. 6,11,12, 14 and 4 are possible with the stones Ex.P7 and P.10. In his statutory statement, Ram Chander accused has denied all the allegations appearing in the prosecution

evidence against him. He has denied recovery of stones as well as the clothes in pursuance of his disclosure statement. In view of the observations extracted from the case of **Mir Mohammad Omar and others etc. etc.** (supra), the accused alone knew what happened to the deceased Jagdish so long he was with them. As per evidence, he was murdered within a short time after his abduction. So, the permitted reasoning process enables the court to draw the presumption that the deceased was murdered by the accused. The appellant in his statement under Section 313 Cr.P.C. has not disclosed as to what had happened to the deceased when he was in their custody. Section 106 of Evidence Act lays down that "when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." In the case in hand, the prosecution has succeeded in proving that the deceased was last seen in the company of the accused. So, as per the provisions of Section 106 ibid, it was within the knowledge of the accused as to what happened to the deceased when he was in their custody for the reason that the prosecution has adequately established on the record that this fact was within the knowledge of the accused. It is in the prosecution evidence that on some occasion the deceased used to sleep at the Dhaba of Babu Ram father of Shiv Charan PW and the accused also used to visit this Dhaba frequently for taking tea. The dead body was recovered at a distance of about 100/200 yards away from this Dhaba. It is in the evidence of Shiv Charan PW that he had seen the accused quarrelling with the deceased at 9/10 PM near the aforesaid Dhaba. The accused were to get back the watch and Rs.700/- from the deceased either by resuming

gambling or otherwise. This motive is amply borne out from the statements of Sukhdevi as well as Tara PWs. It is a celebrated dictum of law that the alleged motive in a case may be very meagre and ostensibly in some others there may not be any motive, but for that reason alone the prosecution story cannot be thrown out as false or regarded improbable or suspicious. [See: **Chhuhar Singh and another vs. The State**, A.I.R. 1955 Pepsu, 81]. Motive is not necessarily the linchpin of successful prosecution. The facts which have been proved by the prosecution are enough to draw the inference that the murder of Jagdish was committed by the appellant alongwith others. Had the person of the deceased been taken away from the accused by some intruder his name by all probabilities might have been disclosed by the appellant in his statutory statement. The appellant is the abductor. He has not given any explanation as to what happened to Jagdish after he was abducted by them.

Last of all, it has been maintained by Mrs. Vandana Malhotra, Advocate that a careful delving into the evidence would reveal that there is delay of as many as seven hours in registering the case, which has not been explained satisfactorily. There could be every possibility that this sufficient time was lost in holding discussions, deliberations and confabulations to rope in the accused. There is a little force in this contention. The dead body was located around 10.30 AM whereafter the information was given to the police. The deceased was a poor labourer. His legal heirs could not infiltrate influence upon the police to rush to the spot hurriedly.

In re:**Tara Singh vs. State of Punjab,** 1991(2) Recent

Criminal Reports (Crl.), 622 also relied upon by the learned trial Court, it has been observed as under:

> "4. It is well-settled that the delay in giving the F.I.R. by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all, it is but natural in these circumstances for them to take some time to go to the Police Station for giving the report. Of course the Supreme Court as well as High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons, the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and

> caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so, the contents of the F.I.R. also will have to be secrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the F.I.R. and later substantiated by the evidence merely on the grounds of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case."

Coming to the facts of the instant case, there is nothing on the record to pick holes of fabrication in the prosecution evidence. The prosecution story as laid in the FIR is fully substantiated by the prosecution evidence. Consequently, the alleged delay in giving the FIR by itself cannot be deemed to be a ground to look upon the prosecution case with suspicion. The complainant party being Jhuggi-dwellers could not be expected to rush to the police station immediately soon after the detection of the dead body lying in the gutter. They being in remorseful mood could not be expected to act mechanically with all the promptitude. They being grief-stricken it may not have occurred to them to lodge the report with the police without any loss of time. As already noticed, there is sufficient ocular as well as circumstantial evidence to connect the appellant with the crime. So, the alleged delay pales into insignificance.

No other material point has been urged or agitated by Mrs.Vandana Malhotra, Advocate at bar.

In the result, the impugned judgment does not suffer from any infirmity or illegality. Sequelly, this appeal is dismissed being meritless.

(Harbans Lal)
Judge

4th December, 2007 **(Mehtab S.Gill)**
gsv **Judge**

Whether to be referred to the Reporter ? **Yes/No**